IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 427.

FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE,

Appellant,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Appellee.

BRIEF *AMICI CURIAE* ON BEHALF OF THE SAVINGS BANKS ASSOCIATION OF THE STATE OF NEW YORK IN OPPOSITION TO THE APPEAL.

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Introduction.

The undersigned members of the Bar of this Court file this brief as *amici curiae*, pursuant to Rule 27 (9) (b), on behalf of The Savings Banks Association of the State of New York. There have been filed with the Clerk of this Court the written consents of both parties to the action.

The Savings Banks Association of the State of New York is composed of 130 mutual savings banks in that State. These banks had in the aggregate, as of September 30, 1953, deposits amounting to $14,100,000,000. They had 7,900,000 depositors, not including school and club savings depositors. The savings banks, being mutual, have no stockholders.

The question presented in this case is whether a New York statute of 1905 implementing a long established state policy of refusing to commercial banks the advertising use of the word "savings" and reserving the word to mutual institutions operated solely for the benefit of those who invest their savings, either impairs the operation of national banks or conflicts with the Federal Reserve Act solely because such act uses the word "savings". The Court of Appeals held the New York statute constitutional.

Summary.

The century old policy of the State of New York, reserving to mutual savings banks and subsequently to other mutual thrift institutions the right to use the word "savings" in advertising, is in our opinion not inconsistent with the Federal Constitution. If in accordance with such a policy the commercial banks of the State, great or small, state or national, are under the necessity of referring to their interest-bearing accounts of individual depositors as "thrift accounts", "special interest accounts", or "compound-interest accounts", rather than "savings accounts", the Constitution of the United States is not thereby offended. That document does not command that a uniform federal terminology must replace state usages of great antiquity, where no federal statute imposes such uniformity and no federal purpose is thwarted by the state policy.

This court has many times held that national banks are subject to the laws of the state in which they operate unless such laws interfere with the purposes of the national bank's creation or impair its efficiency. The record in this case is substantially devoid of any evidence that requiring commercial banks to distinguish their interest-bearing accounts

of individuals from those of non-profit institutions injures the commercial banks. Those who ask this court to approve their defiance of the long-standing law of the State must show that the law in fact operates to cripple them. They have not made such a showing.

The evidence in this case indicates that national banks have prospered equally with mutual savings banks during the time that the challenged statute has been in effect. It also indicates that if the word "savings" has any prestige in New York State not possessed by the terms presently permitted to national banks, it is due to its association with the superior advantages offered by mutual savings banks. In these circumstances, national banks should not be allowed to appropriate a word which for a century and a half has connoted mutuality.

The history of the Federal Reserve Act shows no intention on the part of Congress to challenge or override the long existing state policy, and the mere use of the phrase "savings deposit" in that statute does not conflict with the state law as to advertising.

ARGUMENT.

1. The appellant has failed to demonstrate any substantial interference by the state law with the operation of its business. No material disadvantage to national banks has resulted from inability to use the word "savings" as opposed to "thrift" or other equivalents. Any superior prestige which the word "savings" may have in New York State is due to its long association with mutual savings banks.

Appellant Franklin National Bank deliberately, by its own admission, violated Section 258 of the Banking Law of New York by using the word "savings" in its advertising. It can prevail in this litigation only if it convinces this Court that the law of the State is unconstitutional. Although this is a question of law, its determination, under a series of decisions of this Court, depends on whether the State law "frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the Federal government to discharge the duties for the performance of which they were created." *Davis* v. *Elmira Savings Bank,* 161 U. S. 283 (1895); *McClellan* v. *Chipman,* 164 U. S. 357 (1896); *Anderson National Bank* v. *Luckett,* 321 U. S. 233 (1944). It is of course the responsibility of the national bank to establish the fact of such frustration or impairment.

In an effort to establish frustration and impairment, the national bank placed on the stand several presidents of national banks who testified that in their opinion, the fact that they were prevented by law from advertising their individual interest-bearing accounts as "savings" deposits was a "stumbling block", a "heavy handicap", and "detri-

mental" to them [R. 149, 157]. These self-serving and conclusory declarations of interested parties fall far short of the showing which must be made by one who wishes to overthrow a carefully considered and long-existing state law.

There is no adequate showing as to whether savings banks or savings and loan associations are growing faster or slower than national banks. The evidence would seem to indicate that national banks are thriving. Mr. Roth, President of The Franklin National Bank, testified [R. 492] that "our earnings are one of the best in the State of New York and one of the best in the country." National bank assets and deposits have grown rapidly in recent years.

From December 31, 1945 to December 31, 1949, time deposits* of New York State national banks increased 28.1%. During the same period demand deposits decreased 20.6%, reflecting the post-war contraction in money and credit [Defendant's Exhibit NN, R. 652]. The figure for time deposits includes time deposits of corporations, as to which there are no separate figures in the record. If corporate time deposits declined as did demand deposits, it would necessarily follow that the increase in individual time deposits would have been greater than 28%.

From January 1, 1946 to January 1, 1950, deposits of mutual savings banks in New York State increased 33.9% [Defendant's Exhibit NN]. This figure includes no corporate deposits, since corporate deposits are not permitted to be accepted by New York savings banks, nor does it include demand deposits, since all savings banks' deposits are time deposits. New York Banking Law Sections 237,

* Time deposits are those as to which a bank may require 30 days or more notice before the depositors become entitled to repayment; demand deposits are those as to which no notice is required.

238. It would appear that the deposits of mutual savings banks and the individual time deposits of national banks had increased at about the same rate during the above period.

Individual time deposits of the Franklin National Bank represented by passbook, so-called "savings" deposits, increased 57.5% over the same period [Defendant's Exhibit MM, R. 650].

Accounts of state savings and loan associations increased 53.7% and accounts of federal savings and loan associations increased 100.5% over the same period. The record contains no breakdown of figures as to either "savings" or time deposits of state banks or trust companies.

It is apparent that in so far as the foregoing figures indicate anything, they indicate that New York State's national banks have been growing about as fast as savings banks, despite the alleged influence of Section 258, and that the Franklin National Bank has grown much faster than savings banks.

Direct comparison of the records of the different types of institutions in Nassau County are not feasible. There is only one savings bank in Nassau County [R. 146] where the Franklin National Bank is located, and there are no figures in the record as to savings and loan institutions in Nassau County.

The following table shows comparative growths of passbook accounts of the Franklin National Bank, and of deposits of mutual savings banks in New York State, over a somewhat longer period. The figures for the Franklin National Bank were computed from Defendant's Exhibit MM; the figures for mutual savings banks in New York State from the 1952 annual report of the Superintendent

of Banks, Part Two, New York State Legislative Document (1953) No. 20, Schedule 7C, page 42.*

	Franklin National Bank	New York State Mutual Savings Banks
1941-47	424.0%	76.7%
1947-51	111.8%	18.7%
1941-51	1009.5%	109.9%

It is significant to note that Franklin National grew faster in the years before 1947 when it was observing the law than in the years after 1947 when it was defying the law and using the word "savings" in its advertising. In all three periods it has grown much faster than New York State savings banks.

It is obvious that many factors enter into the composition of these figures and that the periods covered are too short to warrant valid generalizations, but nevertheless the figures show the complete failure of the appellants to show that they have sustained any damage from the operation of Section 258.

Proof is lacking, therefore, that national banks have been handicapped in attracting individual depositors. Moreover, there are no figures to show any causal connection between the inability of commercial banks to use the word "savings" and their rate of growth. That savings banks are materially favored in being granted the exclusive use of the word "savings", or commercial banks materially handicapped in being refused the use of the

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* The following are the totals for all New York State mutual savings banks:

	Total Deposits
January 1, 1942	$ 5,554,580,854
January 1, 1948	9,814,535,734
January 1, 1951	11,664,376,316

word, seems unlikely when the following substantial advantages of mutual savings bank depositors are considered:

1. Mutual savings banks pay all of their earnings to their depositors, except for amounts retained as protective surplus or reserves. Commercial banks pay only such interest to their individual depositors as is necessary to attract deposits; the remainder of their earnings they owe to their stockholders [R. 338].

2. Mutual institutions were exempt from federal income tax for taxable years prior to January 1, 1952. I. R. C., 26 U. S. C., Sec. 101 (2), 101 (4).

3. Mutual savings banks have a record for continued solvency and safety far superior to that of commercial banks. No mutual savings banks in New York State have closed with loss to depositors since 1911, and only three since 1884. Annual Report of the Superintendent of Banks Relative to Savings Banks, 1933, Legislative Document (1934) No. 26, Schedule 10, p. 19.

4. Mutual savings banks in most cases pay a higher return on deposits than do commercial banks [R. 486].

When these substantial advantages of mutual savings bank depositors are considered, it becomes clear that the competitive advantage or disadvantage attached to the use of the word "savings" is minimal. The appellant has not shown that all or any part of the New York public's alleged preference for mutual institutions arises from Section 258. In the absence of such a showing, the appellant has not begun to make the showing necessary to strike down the State law.

The appellant's own evidence negates its claim. Much of its case consisted of an expensive and meticulously designed public opinion survey, in the course of which citi-

zens of Nassau County were asked to distinguish between "savings accounts", "compound interest accounts", "thrift accounts", and so forth; to state which institutions offered these services; and to state in which institutions they preferred to invest their money to earn interest.

The survey, instead of substantiating appellant's case, defeats it. It shows that the majority of Nassau County's citizens (assuming the poll to be an accurate sample) prefer to invest their money in a mutual savings bank, whether they call the deposit a savings account or a compound interest account [R. 638-639]. It shows that although savings and loan associations are permitted by Section 258 to use the word "savings", very few of the persons polled thought that savings and loan associations offered the same service as savings banks [R. 637]. The percentage which thought that savings and loan associations were the best places to go for "savings accounts" was about half the percentage that thought national banks were the place to go [R. 637] indicating very clearly that the right to use the word "savings" is not in itself the thing which attracts or repels customers. The percentage which thought that such accounts were offered at savings and loan associations was about equal to that which thought that they were offered at national banks [R. 633-634]. Similar figures appear with respect to "compound interest" accounts and "special interest" accounts. It is clear from the appellant's own showing that the use of the word "savings" in advertising is of no importance in attracting deposits compared with the substantive and substantial differences between the types of institution.

The most the survey shows is that the public does not think that a savings account is the same thing as a compound interest account, and that it prefers to save in mutual savings banks. On both points the public is correct. Any

superior prestige which the word "savings" may possess arises from the fact that the State, and long usage, have associated it with mutual savings banks; and not the other way round. The prestige of the savings banks is not due to any exclusive right to use the word savings, but to the solid advantages which they offer the thrifty public.

2. The policy of the State in reserving the advertising use of the word "savings" to mutual institutions has been long established and is reasonable.

The state legislation attacked in this case dates back to the Laws of 1858, chapter 132 of which made it unlawful for a certain kind of commercial bank to "put forth a sign as a savings bank". The specific language involved came into the statute with chapter 564 of the Laws of 1905, which forbade the use of the word "savings" by any but a savings bank or a savings and loan association. The policy of the state is thus one of long standing.

The Constitution of the State of New York provides that no savings bank "shall have any capital stock; nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings." Article X, Sec. 3. This provision or its predecessors have been part of the Constitution of New York since 1846.

The first savings bank in New York was founded in 1819, as a result of a petition addressed to the legislature by the Society for the Prevention of Pauperism (Paine's New York Banking Laws (Seventh Ed., 1914) (p. 59)). Many

other early savings banks were similarly founded as quasi-eleemosynary organizations [R. 285]. The people of the State, both through the Constitutional Conventions and through the legislature, have been careful to preserve the peculiar status and responsibilities of mutual savings banks as trustee organizations, invested with a higher responsibility than the ordinary business organization.

The state has also been careful to supervise the investments of savings banks' depositors' money very carefully. Since the earliest days, such investments have been confined by law to investments of the highest grade. Section 235, New York Banking Law, McKinney's Consolidated Laws of New York Annotated. While the accumulation of funds in savings banks and other institutions, for instance insurance companies, has forced the legislature to broaden the field of investment, including a limited authorization to invest not more than 3% of a bank's assets in high grade common stocks, nevertheless the principle is unchanged that savings banks' investments are regulated and prescribed by the state. This may be contrasted with the practice of national banks as stated by the appellant's president [R. 442], of not segregating the investment of demand deposits and savings deposits, but investing both combined. In other words, the investment of savings banks' deposits is closely regulated, but the deposits of commercial banks may be invested in loans to business enterprise and other loans not specifically prohibited, and no distinction is drawn by commercial banks between demand deposits and time deposits. Perhaps in consequence of these facts, the rate of failures among mutual savings banks during this century has been negligible.

It was only natural, therefore, that the people of the state should desire to keep separate in the public mind the mutual, supervised institution on the one hand and the general commercial bank, operated solely for the benefit of its stockholders, on the other. This they did by the law of 1858 forbidding commercial banks to "put forth a sign as a savings bank". The original statute applied in terms to note-issuing commercial banks; but when note issue by state banks had been taxed out of existence, the statute was promptly amended by Chapter 371 of the Laws of 1875 to apply to all commercial banks (see *People* v. *Doty*, 80 N. Y. 225 (1880)). In *People* v. *Binghamton Trust Co.*, 139 N. Y. 185, 34 N. E. 898 (1893), the Court of Appeals construed the statute as inapplicable to mere similarities in business methods. The court said (p. 192),

> "The trust Company is incorporated for the purpose of gain to the members of the corporation; while the savings bank is in the nature of a charitable institution, the sole corporate purpose of which is to securely protect moneys deposited up to a certain fixed amount by individuals and, by investing them in such limited and prudent ways as the legislature has prescribed, to secure a safe and moderate return by way of interest upon the moneys held. Whatever tends to the protection of a bank for savings is in the public interest, and it is in the line of that protection that any appearance, or external sign, or representations should be prohibited, which would deceive and cause the public to suppose that a business institution, really organized for the gain of its members, was a savings bank."

Twelve years later, in 1905, the legislature further implemented this historic policy by providing that none but mutual institutions should use the word "savings" in

advertising or in their business. The privilege has been consistently denied to commercial banks, run for the profit of their stockholders and lending the money they receive to the general business community with little restriction. The policy behind such denial is as sound today as it was in 1858.

The prohibition of the word "savings" to commercial banks is clearly in the public interest, and is not designed to preserve any monopoly to mutual institutions. See *People* v. *Doty*, 80 N. Y. 225 (1880); *People* v. *Binghamton Trust Co.*, 139 N. Y. 185, 34 N. E. 898 (1893). The prohibition is intended to make it more easily possible for small savers to distinguish between commercial banks and mutual institutions. The small saver is not experienced in distinguishing between banking institutions and for that reason may become confused. To some people a bank is a bank. Mutual savings banks have the primary purpose of promoting and safeguarding depositors' savings at the highest rate of return that can be safely given. It is clearly in the public interest that safeguards against misunderstandings be erected. That is precisely what this legislation did and continues to do. It restricts the use of the word "savings" to mutual institutions primarily engaged in encouraging and safeguarding savings and prohibits its use to others.

As the Attorney General of New York ruled in 1917, in concluding that the use of the word "savings" in Section 19 of the Federal Reserve Act did not nullify the state law:

> "The words 'savings banks' have accordingly come to have a special meaning to small savers as denoting this increased protection to their deposits, and they would be deceived by its use by other banks. As Congress did not, we believe, intend to authorize a national bank to do business as a 'savings bank',

so it did not intend to interfere with any safeguards for the small savings depositor which the State may have devised to protect him." 10 St. Dept. Rep. (N. Y.) 489, 491.

3. No federal enactment conflicts with the state policy. Despite conflicting views of the Comptroller of the Currency and the General Counsel of the Federal Reserve Board as to whether state laws like Section 258 applied to national banks, Congress has never spoken on this question.

No federal statute enacted before or since these statutes conflicts with them. Appellants have attempted to imply a conflict with Section 24 of the Federal Reserve Act. Actually, this section makes no reference to advertising powers, but merely states incidentally that a national bank may "continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same" at rates within the specified limits. The statute obviously has nothing to do with advertising.

Originally national banks did not accept passbook deposits of individuals [R. 281]. In 1905 the Comptroller of the Currency issued a circular letter in which he stated that there did not appear to be anything in the National Bank Act which authorized or prohibited the operation of a savings department by a national bank. Willis & Steiner, Federal Reserve Banking Practice (1926) page 657. By 1911 over 50% of national banks reporting to the Comptroller (48% of all national banks) had "savings" deposits.

In 1907 the Comptroller announced:

> "The right of a national bank to pay interest on deposits necessarily carries with it the right to advertise that policy, but where, as in some states,

> the laws prohibit the use of the word 'savings' and the soliciting or receiving of deposits as a savings bank by banking institutions not authorized by state law to do a savings-bank business, it is probable that the courts will hold the prohibition against the use of the word 'savings' applicable to national banks, but not the prohibition against soliciting and receiving interest-bearing deposits."

This position was adopted by the Comptroller of the Currency in the manual issued periodically by his office, *Instructions and Suggestions of the Comptroller of the Currency Relative to the Organization, Etc. of National Banks,* Treasury Document 2476 (1907) page 41.

The statement was repeated in the 1909, 1911 and 1914 editions of the manual, the last of which appeared subsequent to the passage of the Federal Reserve Act. Beginning with the 1919 edition of the manual, however, the Comptroller changed his position and adopted that of the General Counsel of the Federal Reserve Board. It does not appear that any legislation or decisions subsequent to 1907 contain anything which should have changed the views held by the Comptroller in 1907-1914.

The Federal Reserve Act as passed in 1913 (38 Stat. 251, 273) contained a provision (Sec. 24) authorizing national banks to make loans on farm land up to 25% of capital and surplus or to one-third of its time deposits "and such banks may continue hereafter as heretofore to receive time deposits and pay interest on the same". The General Counsel of the Federal Reserve Board construed this language as granting to national banks by implication the right to advertise "savings" deposits in contravention of state laws (1915 Fed. Res. Bull. 18), but it seems clear that if national banks previously had the power to accept "savings" deposits but not to use the word savings in advertising

where state laws forbade, that situation was not changed by Section 24 as enacted in 1913.

Nor could the situation have been changed by the amendment of February 25, 1927, 44 Stat. 1232, inserting the word "savings" after the word "time", and limiting the rate of interest payable to the maximum paid by state banks. By that time Congress presumably knew that a difference of opinion existed as to whether the state laws such as New York's Section 258 were applicable to national banks. The Attorney General of New York had ruled both before and after the passage of the Federal Reserve Act that the right of national banks to receive "savings" deposits did not make Section 258 inapplicable to their advertising. Op. Atty. Gen. (N. Y.) (1907) 473; Op. Atty. Gen. (N. Y.) (1908) 382; Op. Atty. Gen. (N. Y.) 1917, 10 St. Dept. Rept. 489.

The 1927 amendments to the Federal Reserve and National Bank Acts made a number of adjustments in the delicate field of state and federal relations vis-a-vis national banks, for instance with respect to branch powers of national banks. If Congress had desired to nullify laws such as Section 258, it could have found a more direct way to do so than merely by inserting the word "savings" in a statute limiting the interest rate which national banks could pay on deposits to that paid by state banks. The mere use of the word "savings" in the text of the statute (actually, it is used in one or two other places besides Section 24) made no change in the law as to advertising powers.

The weight of a half century of practical construction, therefore, is in accord with the Comptroller's original conclusion that the practice of national banks in accepting time deposits of individuals, and Congressional sanction thereof, do not carry any implication that Congress has

nullified Section 258. "The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or consistently stand together." *Kelly* v. *Washington,* 302 U. S. 1 (1939). Powers will not be granted to national banks by implication, if such implication will raise an otherwise avoidable conflict with state statutes. *First National Bank* v. *Missouri,* 263 U. S. 640 (1924).

In this case it is clear that there is no unavoidable conflict between state and nation. Not only can national banks operate by describing their services as "thrift accounts" or the like, but they have so operated for many years, and very prosperously too. If, actually, the advantages which they offer to depositors were equivalent to those of mutual savings institutions in rate of return, safety, or convenience, the craft of modern advertising could in these fifty years have impressed the public with the words "thrift account" as deeply as the public is claimed to have been impressed with the words "savings account". Instead appellants have sought to borrow for their own institutions the implications which in the past century have attached to the word "savings" in New York State. Neither the fact that the word is used by the Federal Reserve Act in the sense appellants desire, nor the fact that it carries their connotation in other states, permits such an appropriation.

The situation in other states is not relevant here. Only two or three states have statutes similar to New York. Moreover, a different situation would obviously be presented if a state were attempting to appropriate a usage popularly connected with national banks, instead of a

national bank attempting to appropriate a usage long associated by the state with mutual institutions.

The Constitution does not prescribe the substitution of a uniform federal terminology for a variety of state usages, merely because the terminology happens to be used in a federal statute. If Congress desires to regulate bank advertising, no doubt it can expressly authorize and direct national banks in such a way as to stamp out state usage; but it has not done so here.

Conclusion.

The mutual institutions of New York and the national banks of New York have prospered side by side for a century, despite the fact that only the former were entitled to use the word "savings" in advertising. An enterprising national bank, feeling that the word carries more prestige than the words "thrift" or "compound interest", now challenges the states' historic policy. It bases its claim to use the word on the fact that the word is used in a Federal statute which was not intended to deal with the question. It has not made any real showing of prejudice other than assertions unsupported by figures. It should not prevail.

Respectfully submitted,

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APPENDIX

Chap. 132, Laws of 1858 (New York)

SEC. 1. It shall not be lawful for any bank, banking association or individual banker, authorized to issue circulating notes, by the law of this state, established in any city or village where a chartered savings bank is located and transacting business, to advertise or put forth a sign as a savings bank, and any bank, banking association, or individual banker, which shall offend against these provisions shall forfeit and pay for every such offence the sum of one hundred dollars for every day such offence shall be continued, to be sued for and recovered in the name of the people of the state, by the district attorneys of the several counties in any court having cognizance thereof, for the use of the poor, chargeable to said county in which such offense shall be committed.

Chap. 371, Laws of 1875 (New York)

SEC. 49. It shall not be lawful for any bank, banking association or individual banker, to advertise or put forth a sign as a savings bank, or in any way to solicit or receive deposits as a savings bank; and any bank, banking association or individual banker, which shall offend against these provisions, shall forfeit and pay for every such offense. * * *

Chap. 564, Laws of 1905 (New York)

SEC. 1. Section one hundred and thirty one * * * as amended * * * is hereby amended to read as follows:

SEC. 131. Advertisements of unauthorized savings banks prohibited. No bank, banking association, individual banker, firm, association, corporation, person or persons shall make use of the word "savings" in their banking business, or advertise or put forth any advertising litera-

ture, or sign as a savings bank, or in any way solicit or receive deposits as a savings bank, other than a savings bank or a building and loan association organized under the laws of the state of New York . . .

Sec. 24, Federal Reserve Act of 1913, 38 Stat. 273
Loans on Farm Lands

Any national banking association not situated in a central reserve city may make loans secured by improved and unencumbered farm land, situated within its Federal reserve district, but no such loan shall be made for a longer time than five years, nor for an amount exceeding fifty per centum of the actual value of the property offered as security. Any such bank may make such loans in an aggregate sum equal to twenty-five per centum of its capital and surplus or to one-third of its time deposits and such banks may continue hereafter as heretofore to receive time deposits and to pay interest on the same. * * *

Sec. 16, P. L. 639, 69th Cong., 44 Stat. 1232 (1927)

That section 24 of the Federal Reserve Act be amended as follows:

SEC. 24. Any national banking association may make loans secured by first liens upon improved real estate, including improved farm land, situated within its Federal reserve district or within a radius of one hundred miles of the place in which such bank is located, irrespective of district lines. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by mortgage, trust deed, or other such instrument upon real estate when the entire amount of such obligation or obligations is made or sold to such association. The amount of any such loan shall not exceed 50 per centum of the actual value of the real

estate offered for security, but no such loan upon such security shall be made up for a longer term than five years. Any such bank may make such loans in an aggregate sum including in such aggregate any such loans on which it is liable as indorser or guarantor or otherwise equal to 25 per centum of the amount of the capital stock of such association actually paid in and unimpaired and 25 per centum of its unimpaired surplus fund, or to one-half of its savings deposits, at the election of the association, subject to the general limitation contained in Section 5200 of the Revised Statutes of the United States. Such banks may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such banks may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State wherein such national banking association is located.